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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/727,708

12/03/2003

Paul Koning

42P17610

8622

59796

7590

07/11/2007

INTEL CORPORATION

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EXAMINER

BUTLER, PATRICK

ART UNIT

PAPER NUMBER

1732

MAIL DATE

DELIVERY MODE

07/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/727,708	Applicant(s) KONING ET AL.	
	Examiner Patrick Butler	Art Unit 1732	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-10 and 16.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Continuation of 5. Applicant's reply has overcome the following rejection(s): The rejection of Claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over Davison (U.S. Patent Application Publication No. 2004/0266064), and further in view of Hanson et al. (U.S. Patent No. 6,962,670), and the rejection of Claims 7-10 under 35 U.S.C. 103(a) as being unpatentable over Koning et al (U.S. Patent Application Publication 2005/0116299), and further in view of Hanson et al. (U.S. Patent No. 6,962,670).

Response to Arguments

Applicant's arguments filed 18 June 2007 have been fully considered but they are not persuasive.

Applicant argues with respect to the 35 USC 103 rejections. Applicant's arguments appear to be on the grounds that:

1) Via Applicant's statement of obligation of assignment of Davison (U.S. Patent Application Publication No. 2004/0266064) and Koning et al (U.S. Patent Application Publication 2005/0116299) disqualifies them as prior art, and the 103 rejections using them should thus be withdrawn.

2) Since Claims 1 and 7 does not measure the thickness of the material and instead measures the presence of a material, Hanson's teaching of determining the thickness does not teach the step of determining presence.

3) Resnick's removal of material is mandatory and not a removal of excess material.

4) The Examiner's determination of the references' shared concern for non-uniformity is unclear with respect to Resnick.

The Applicant's arguments are addressed as follows:

1) As cited in section 5 of PTOL-303, the Examiner withdraws the rejection of Claims 1-6 under 35 U.S.C. 103(a) as being unpatentable over Davison (U.S. Patent Application Publication No. 2004/0266064), and further in view of Hanson et al. (U.S. Patent No. 6,962,670), and the rejection of Claims 7-10 under 35 U.S.C. 103(a) as

being unpatentable over Koning et al (U.S. Patent Application Publication 2005/0116299), and further in view of Hanson et al. (U.S. Patent No. 6,962,670).

2) Hanson's determination of thickness indicates presence when thickness is greater than zero.

3) Resnick teaches further processing the patterning layer by wet or dry etches to remove excess material (see [0016]) as required by Applicant's Claim 16. To the extent that when the further processing of Resnick occurs, such further processing is mandatory, it is noted that Applicant's removal of additional material in Claim 16 is mandatory to the extent that it is required by the claim.

4) Resnick's surface is non-uniform in much of Fig. 1, and such surface is desired by Resnick's method. Thus, Resnick is directed to a non-uniform surface.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick Butler whose telephone number is (571) 272-8517. The examiner can normally be reached on Mon.-Thu. 7:30 a.m.-5 p.m. and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick Butler
Assistant Examiner
Art Unit 1732


CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER

7/7/07